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July 20, 2004

Easement Division  
U.S. Department of Agriculture  
National Resource Conservation Service  
P. O. Box 2890  
Washington, DC 20013-2890

Attention: Grassland Reserve Program – Comments on Interim Final Rule  
Published May 21, 2004 in the Federal Register

To Whom It May Concern:

California Rangeland Trust is a California nonprofit corporation whose mission is to conserve the open space, natural habitat and stewardship provided by California ranches. The California Rangeland Trust currently holds conservation easements covering approximately 75,000 acres of rangeland in California, and has applications for over 500,000 additional rangeland acres from willing landowners who want to protect their California ranches with conservation easements. The California Rangeland Trust has become a leading force in conserving working ranches and the habitat these lands provide. Ranchers' confidence in the California Rangeland Trust is an example of our leadership in blending strong resource protection with the continuation of historic ranching traditions. **Obtaining funding is the most significant impediment to purchasing conservation easements and protecting rangeland.**

California Rangeland Trust would like to match funds from the Grassland Reserve Program with California bond funds to acquire easements over important rangeland in California. California has 21 million acres of privately-owned rangeland in California. However, as currently structured, California Rangeland Trust would not participate in the Program. And yet, the need for conservation easements in California and the West is urgent as the pressure to develop open space increases and land prices rise. The result, of course, is the permanent loss of privately owned grassland, rangeland and pasture, and the habitat that land supports.

We appreciate the opportunity to submit the following comments on the interim final rule published in the Federal Register, Vol. 69, No. 99, Friday May 21, 2004, pages 29173-29187.

1. **The intention of the GRP legislation was to allow land trusts to hold title to conservation easements. [§1415.17]**

- In 2001, the National Cattlemen’s Beef Association and The Nature Conservancy developed and introduced legislation to create the Grassland Reserve Program in the Conservation Title of the 2002 Farm Bill. California Rangeland Trust, the California Cattlemen’s Association and other state cattlemen’s associations supported this legislation as a new tool to permanently protect working landscapes with native grass resources. These groups presented the original legislation with the specific intent that landowners would have a choice to select the easement holder: either USDA or private nonprofit organizations qualified to hold conservation easements. The legislation adopted by Congress codified that intent. The interim final rule is contrary to Congressional intent.
- The plain language of the statute (16 U.S.C. 3838q) states that a land trust may “hold and enforce an easement” – the interpretation of this language by the Office of General Counsel to limit a land trust’s activity to administering and enforcing an easement is contrary to the plain language of the statute and frustrates the intent of the statute.
- Land trusts are in a superior position to ensure GRP is a success in the long term: an agricultural land trust has experience in monitoring rangeland; the land trust establishes on-going relationship with landowner and is alert to any potential problem due to its proximity to the land.
- Land trusts have the unique opportunity to strategically bring ranchers to GRP who would not participate in the program if governmental entity holds the easement.
- Land trusts can use state funds to leverage the GRP dollars thereby increasing the effectiveness and expansion of protected grasslands.
- Land trusts have an obligation to monitor the easement annually and thus the public interest is protected.

2. **Delegating the administration and enforcement of the easement to a land trust is unworkable. [§1415.17]**

- As the interim final rule is currently drafted, if a land trust agreed to administer the conservation easement, the land trust would become an unfunded enforcement arm of the federal government. Responsible land trusts will not assume the obligations to monitor the easement without adequate funding for those monitoring obligations.

- GRP should compensate a land trust for monitoring activities as part of a third party service provider program.

3. **The purpose of GRP is not to “improve” plant and animal biodiversity. [Section 1415.1(b)(4)]**

- GRP was developed to provide funds for the permanent protection and preservation of large intact grasslands and ranches threatened by development and other conversion pressures, not to improve plant and animal biodiversity. Section 1415(b)(4) should be stricken.

3. **Conservation plan is superfluous and poor use of GRP funds [§1415.4(c)]**

- The conservation easement and more specifically, the baseline or present conditions report prepared in connection with every conservation easement, will identify the conservation values and will establish what future uses are prohibited; the mere existence of a conservation easement will prevent development and thus preserve the vitality of grassland; a conservation plan is superfluous and will delay completion of these transactions.

- The inclusion of conservation plans was specifically considered and rejected during the farm bill deliberations.

- The intent of GRP is to limit development and protect conservation values. GRP is not a program to enhance grasslands thus the notion that there will be future practices to be implemented along with a schedule for performance is contrary to the intent of the Program.

- It is beyond the mission of a land trust to be involved in day-to-day management of a ranch; such activity will tax land trust resources and subject land trust to liability.

- 4. Land trusts must be allowed to use their own form of easement after approval of the form by the local NRCS rather than a national form. [§1415.4(f)]**

  - In order for a land trust to efficiently monitor easement, the land trust form of easement is preferred. The form could be pre-approved by the local NRCS and thus the cost of review and approval would be minimized.
- 5. The language in Section 1415.4(f) must be revised to clarify the easement is transferring development rights only, and not all “interest” in the land.**

  - The language in Section 1415.4(f) is too broad and could be interpreted to mean the landowner conveyed all interest in the land to USDA. The intent of the program is to protect the land from development; the landowner retains all other interest in the land.
- 6. The local working group (similar to EQIP) should determine the appropriate restrictions on haying during nesting season. [Section 1415.4(h)(2)]**

  - Local working groups may be best qualified to determine these restrictions because they have the local expertise to analyze the range of climate and species necessary to establish appropriate restrictions during nesting season.
- 7. Corrals should be allowed under Section 1415.4(h)(3).**

  - Corrals are necessary component to a successful grazing operation. A carefully drafted conservation easement can protect habitat while allowing a corral to be placed in a portion of a ranch without degrading the viability of the grassland.
  - The outright prohibition of corrals will limit a landowner’s ability to adapt management practices.
- 8. Written notification should be required before NRCS is provided access to land in GRP. [Section 1415.4(d)]**

  - It is important for NRCS or the entity holding the easement to have oversight of these properties; however, it is also important to recognize the right of the landowners to have written notification before any visits.
- 9. Light discing should not be subject to the discretion of USDA (Fed.Reg. 29176).**

- 10. We support allocating funds to the States and allowing decisions to be made on which properties should be funded on a more local level. [§§1415.2(b); 1415.8].**
- 11. We support accepting applications on a continual basis; but we suggest there be no less than four cut-off periods each year so projects can be ranked and selected periodically throughout the year. [§1415.2(i)]**

CRT appreciates the opportunity to submit comments, and NRCS' willingness to take our concerns into consideration. We have been actively participating with the Program at our state level by assisting in the development of the state ranking criteria and remain committed to the Program. If you have any questions, please feel free to call me at 916-444-2096, or by email at [ncvail@rangelandtrust.org](mailto:ncvail@rangelandtrust.org).

Sincerely,

Nita C. Vail  
Executive Director